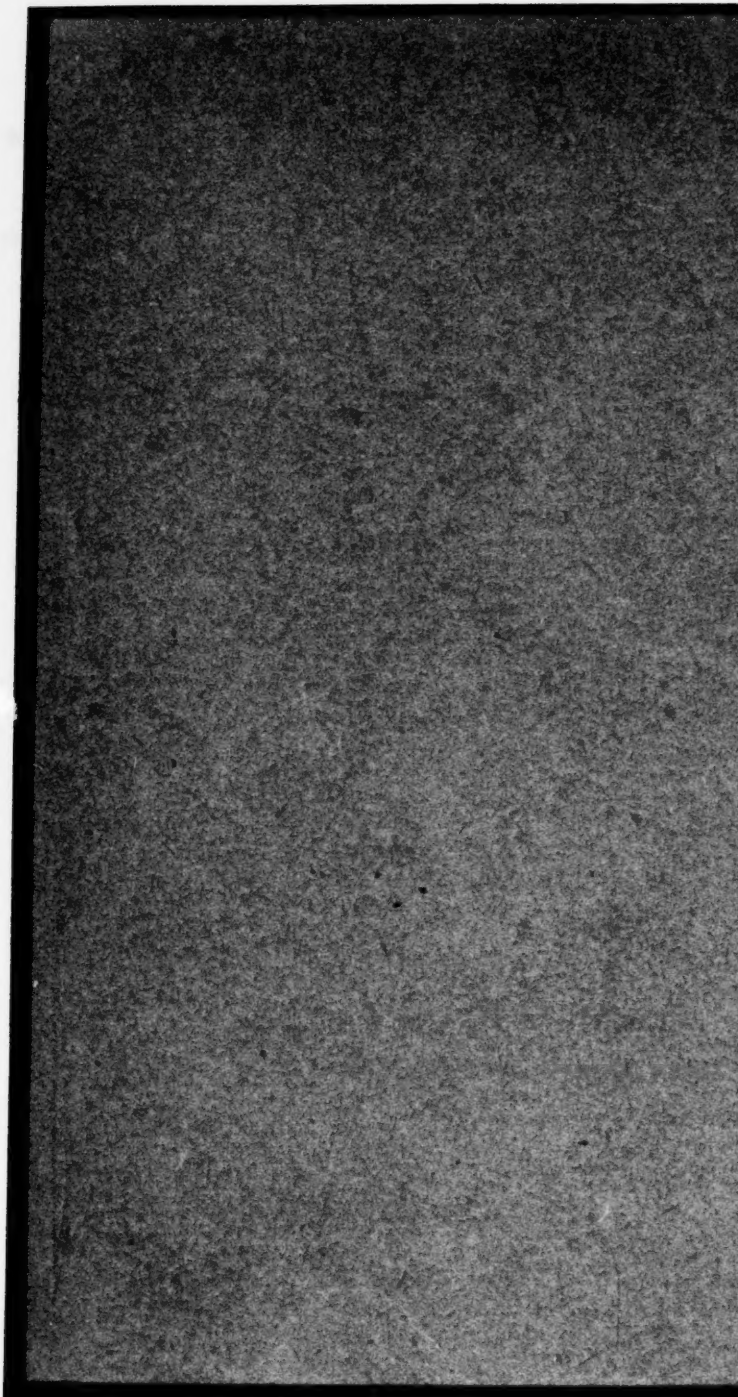
(16,257)



(16,257)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 491.

HENRY C. KING, PLAINTIFF IN ERROR,

vs.

M. B. MULLINS, ALEXANDER McCLINTOCK, AND JOHN McCLINTOCK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

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a Fourth Judicial Circuit.

In the Circuit Court of the United States for the District of West Virginia, at Parkersburg.

HENRY C. KING
vs.
SIMON S. ALTIZER *et al.* } In Ejectment.

Tried as to defendants M. B. Mullins, Alexander McClintock, John McClintock.

1 Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court of the United States for the district of West Virginia, at Charleston, on the 4th day of March, 1895, came Henry C. King, by counsel, and filed his declaration in ejectment; which said declaration in ejectment is in the words and figures following, to wit:

In the Circuit Court of the United States for the District of West Virginia, Fourth Judicial Circuit.

Henry C. King, a citizen and resident of the State of New York, plaintiff, complains of Simon S. Altizer, Aaron Altizer, J. Altizer, Joseph Altizer, J. C. Alderson, W. W. Adams, H. C. Avis, John R. Browning, Chapman Browning, Joseph Browning, Aaron Browning, Levi Browning, Russell Browning, Albert Browning, Loran Browning, Jesse L. Browning, Milton Browning, William C. (commonly called Chapman) Browning, Cloyd Bailey, King Hiram Blankenship, Henry Blankenship, Richard B. Blankenship, J. H. Blankenship, J. M. Blankenship, U. B. Buskirk, Curtis Ballard, Eli Blankenship, Joseph H. Blankenship, Larkin Cline, G. W. Cline, William Cline, Moses C. Cline, Anthony Cline, Abe Cline, Harrison Cline, L. D. Chambers, Margaret L. Chambers, Martha J. Chambers, James L. Chambers, Sidney Chambers, William Claypool, P. B. Dobbins, trustee; John Davis, Sherman Davis, Charles Elkins, Uriah W. Elkins, Crockett Allison, Leander Ellis, Scott Ellis, J. B. Ellison, A. J. Ellis, O. F. Ferrell, L. B. Godfrey, Joel Gibson, Anderson Grimmett, J. N. Gibson, Joseph Hinchman, L. D. Hinchman, George Hinchman, Sarah D. Hatfielf, Alexander Hatfield, F. M. Harless, Ward Hatfield, W. E. Justice, C. E. Justice, W. A. Johnson, R. L. Joyce, W. T. Kenneda, John Kenneda, F. M. Kenneda, S. P. Kelly, Lewis J. Lester, Pleasant Lester, Bruce McDonald, Wayne McDonald, William W. McDonald, Millard McDonald, G. R. McDonald, Alexander McClintock, John
2 McClintock, George Mounts, Elijah Mounts, M. B. Mullins, Joseph Murphy, M. J. Morgan, James A. Nighbert, Oliver Perry, Jasper Perry, J. F. Paul, J. A. Peck, William Riffe, William Riffe, Jr., Nancy C. Rutherford, Lewis Riffe, Leander Riffe, L. D. Riffe, E. H. Simpkins, Joseph Simpkins, J. S. Stafford, Ralph Steel, Harrison Steel, J. A. Sheppard, Samuel Stafford, W. G. Sansom,

Martha Steel, A. M. Toler, J. C. B. Toler, A. H. Toler, J. M. P. Toler, J. C. Toler, Mary B. Toler, Lara Z. Toler, Nettie Toler, J. E. Toler, Alexander Trent, F. Marion Trent, A. A. Vance, Charles Walker, Preston Walker, J. E. Chilton, trustee, citizens and residents of said State of West Virginia, and Grayton Mining Company, Grayton Water Works and Improvement Company, Forest Coal Company, and Spruce Coal and Lumber Company, corporations organized under the laws of said State of West Virginia, and Bowman Lumber Company, a foreign corporation doing business in said State of West Virginia, defendants, of a plea of trespass, to wit, that heretofore, to wit, on the 1st day of January, A. D. 1894, the plaintiff was possessed in fee of a certain tract or parcel of land in the States of Virginia, West Virginia, and Kentucky, being a tract of land granted to Robert Morris by the Commonwealth of Virginia by patent dated June 23d, A. D. 1795, and in said patent described as follows:

Beginning at two poplars and two chestnut trees on a branch of Guyandotte river, about six miles from the mouth of Little War creek, a branch of Sandy river, being a corner of a survey of said Nicholas of 480.000 acres and of a survey of 320,000 acres made for said Nicholas and Jacob Kinney, and with a line of the latter S. 33 degrees W. 6,720 poles, crossing a dividing ridge, and down War creek to the mouth, crossing Sandy river at six miles, crossing Panther creek at nine miles, and crossing several ridges to four white oaks on the northwest bank of Knox creek, and thence, leaving said survey, W. 3,840 poles, crossing said creek and some of the branches thereof and along the spurs of the ridge dividing the waters of said creek and Peter's creek, a branch of Sandy river, to three poplars and a sugar tree by a small branch of Knox creek; thence N. 8,000 poles, crossing Knox creek at about four miles, Sandy river at twelve miles, at the mouth of Turkey creek, and up said creek and the N. W. forks of same, crossing Buffalo creek, Pigeon creek, and the dividing ridge between Sandy and Guyandotte rivers and Gilbert's creek twice, a branch of Guyandotte, to three sugar trees in a bottom of said river and about 20 poles below the mouth of Gilbert's creek, and thence N. 10 degrees E. 4,450 poles, crossing Guyandotte river, several small branches, and some ridges to pointers; thence E. 6,620 poles, crossing Guyandotte river and several branches thereof, to three sugar trees and a buckeye by a small branch of the same, being the N. W. corner of a survey of said Nicholas of 480,000 acres, and thence with same S. 6,800 poles, crossing Huff's or Cain creek, to the beginning.

3

And that, plaintiff being so possessed of said land as aforesaid, defendants afterwards, to wit, on the 1st day of April, A. D. 1894, entered upon that portion thereof lying in the said State of West Virginia and unlawfully withhold the possession of same from plaintiff, to the damage of plaintiff in the sum of fifty thousand dollars ($50,000.00), and plaintiff says that the value of the matter in dispute herein exceeds the sum of five thousand dollars ($5,000.00), exclusive of costs.

Wherefore plaintiff brings this suit.

In the Circuit Court of the United States for the District of West Virginia, Fourth Judicial Circuit.

To Simon S. Altizer, Aaron Altizer, J. Altizer, Joseph Altizer,
4 J. C. Alderson, W. W. Adams, H. C. Avis, John R. Browning, Chapman Browning, Joseph Browning, Aaron Browning, Levi Browning, Russell Browning, Albert Browning, Loran Browning, Jesse L. Browning, Milton Browning, William C. (commonly called Chapman) Browning, Cloyd Bailey, King Hiram Blankenship, Henry Blankenship, Richard B. Blankenship, J. H. Blankenship, J. M. Blankenship, U. B. Buskirk, Curtis Ballard, Eli Blankenship, Joseph H. Blankenship, Larkin Cline, G. W. Cline, William Cline, Moses C. Cline, Anthony Cline, Abe Cline, Harrison Cline, L. D. Chambers, Margaret L. Chambers, Martha J. Chambers, James L. Chambers, Sidney Chambers, William Claypool, P. B. Dobbins, trustee; John Davis, Sherman Davis, Charles Elkins, Uriah W. Elkins, Crockett Allison, Leander Ellis, Scott Ellis, J. B. Ellison, A. J. Ellis, O. F. Ferrell, L. B. Godfrey, Joel Gibson, Anderson Grimmett, J. N. Gibson, Joseph Hinchman, L. D. Hinchman, George Hinchman, Sarah D. Hatfield, Alexander Hatfield, F. M. Harless, Ward Hatfield, W. E. Justice, C. E. Justice, W. A. Johnson, R. L. Joyce, W. T. Kenneda, John Kenneda, F. M. Kenneda, S. P. Kelly, Lewis J. Lester, Pleasant Lester, Bruce McDonald, Wayne McDonald, William W. McDonald, Millard McDonald, G. R. McDonald, Alexander McClintock, John McClintock, George Mounts, Elijah Mounts, M. B. Mullins, Joseph Murphy, M. J. Morgan, James A. Nighbert, Oliver Perry, Jasper Perry, J. F. Paul, J. A. Peck, E. H. Simpkins, Joseph Simpkins, J. S. Stafford, Ralph Steel, Harrison Steel, J. A. Sheppard, Samuel Stafford, W. G. Sansom, Martha Steel, A. M. Toler, J. C. B. Toler, A. H. Toler, J. M. P. Toler, J. C. Toler, Mary B. Toler, Lara Z. Toler, Nettie Toler, J. E. Toler, Alexander Trent, F. Marion Trent, A. A. Vance, Charles Walker, Preston Walker, J. E. Chilton, trustee, citizens and residents of said State of West Virginia, and Grayton Mining Company, Grayton Water Works and Improvement Company, Forest Coal Company, and Spruce Coal and Lumber Company, corporations organized under the laws of said State of West Virginia, and Bowman Lumber
5 Company, a foreign corporation doing business in said State of West Virginia, defendants:

You are hereby notified that the foregoing declaration in ejectment will be filed in the office of the clerk of said circuit court, at Charleston, West Virginia, on the first Monday of March, A. D. 1895, and if you fail to appear and plead thereto judgment will be given against you.

HENRY C. KING,
By MAYNARD F. STILES,
His Attorney.

STATE OF WEST VIRGINIA, } *ss:*
County of McDowell, }

John Rose, a credible person of lawful age, being duly sworn, doth say that he served the foregoing notice and declaration in said State upon Jesse L. Browning Jan. 26th, 1895, and upon M. J. Morgan, John Davis, Sherman Davis, Preston Walker, Samuel Stafford, and F. M. Harless February 1st, 1895, and on Cloyd Bailey February 9th, 1895, all being defendants named therein, by delivering to each of said defendants a copy of said notice and declaration.

JOHN ROSE.

Subscribed and sworn to before me this 9th day of February, 1895.

J. R. AUVILLE, *J. P.*

STATE OF WEST VIRGINIA, } *To wit:*
Logan County, }

C. S. Stone, a credible person, being duly sworn, on oath states that he executed the within notice upon M. B. Mullins, Simon S. Altizer, Wayne McDonald, Ralph Steel, Sarah D. Hatfield, Joseph Simpkins, Nancy C. Rutherford, A. M. Toler, U. B. Buskirk,
6 King Hiram Blankenship, S. P. Kelly, F. M. Kenneda, J. A. Sheppard, James A. Nighbert, J. B. Ellison, C. E. Justice, in Logan county, West Virginia, by delivering to each of them a copy of the within writ and notice on the 3d day of January, 1895, and also upon the Grayton Works and Improvement Company and Grayton Mining Company, corporations organized under the laws of West Virginia, by delivering to H. K. Shumate, their authorized agent of record, upon whom process can be served, in Logan county, West Virginia, on the 5th day of January, 1895, a true copy of said writ and notice.

C. S. STONE.

Taken, subscribed, and sworn to before the undersigned authority in and for said county & State aforesaid by C. S. Stone, a credible person, on this 5th day of January, 1895.

Given under my hand and official seal this 5th day of January, 1895.

J. B. WILKINSON,
Notary Public.

[NOTARIAL SEAL.]

STATE OF WEST VIRGINIA, } *ss:*
County of McDowell, }

Anthony J. Manns, a credible person, of lawful age, being by me duly sworn, doth say that he served the annexed notice and declaration upon the following-named persons, defendants therein named, in said State of West Virginia, upon the days and in the manner following, to wit: Upon Leander Ellis, Scott Ellis, Bruce McDonald, and Alexander Trent January 7th, 1895; upon Uriah W. Elkins Jan. 8th, 1895; upon J. C. Toler and J. M. P. Toler Jan. 9th,

1895; upon Henry Blankenship, Eli Blankenship, Joseph H. Blankenship, A. J. Ellis, Pleasant Lester, William Riffe, Lewis Riffe, and Leander Riffe Jan. 28th, 1895; upon Moses C. Cline, Anthony Cline, and Harrison Cline Jan. 30th, 1895; upon Russell Browning, Albert Browning, and Charles Elkins Jan. 31st, 1895; upon
7 Joseph Browning, Levi Browning, Wc. C. (alias Chapman) Browning, Anderson Grimmett, L. D. Hinchman, and William Claypool February 1st, 1895; upon Aaron Altizer, Joseph Altizer, G. R. McDonald, Margaret L. Chambers, James L. Chambers, Joseph Hinchman, and Oliver Perry February 2nd, 1895; upon R. L. Joyce February 4th, 1895, and upon Joseph Perry February 5th, 1895, by delivering to each of said defendants a true copy of said notice and declaration, and upon O. F. Ferrell, W. A. Johnson, George Mounts, and F. Marion Trent Jan. 7th, 1895; J. H. Blankenship and Larkin Cline Jan. 8th, 1895; L. B. Godfrey, Ward Hatfield, Lewis J. Lester, and William Riffe, Jr., Jan. 28th, 1895; Loran Browning, Aaron Browning, Milton Browning, and Millard McDonald February 1st, 1895; H. C. Avis and L. D. Chambers February 2nd, 1895, and A. A. Vance February 4th, 1895, by leaving at the usual place of abode of each of said defendants, with the wife of each of said defendants respectively, a true copy of said notice and declaration and informing the said wife of each of said defendants respectively of the purport of said copy, the said defendants not being found by affiant; and upon William W. McDonald January 8th, 1895, by delivering to Bruce McDonald, son of said Wm. W. McDonald, over the age of sixteen years, at the usual abode of said Wm. W. McDonald, who was not found by affiant, a true copy of said notice and declaration and giving to him information of the purport of said copy; upon George Hinchman, who affiant did not find, by delivering to and leaving with a son of said defendant over the age of sixteen years, at his usual place of abode, a copy of said notice and declaration, February 2nd, 1895, and giving said son information of the purport of said copy; and upon Martha J. Chambers, who affiant did not find, by delivering to her husband, who is over the age of sixteen years, at her usual place of abode, a copy of said notice and declaration and giving to him information of the purport of said copy.

8 ANTHONY J. MANNS.

Subscribed and sworn to before me this 9th day of February, 1895.

J. R. AUVILLE, *J. P.*

Served on Sidney Chambers by delivering him a true copy of the within ejectment Feb. 4th, 1895. Served on J. M. Blankenship by delivering him a true copy of the within ejectment Feb. 7th, 1895. Served on John R. Browning by delivering to his son, Lafe Browning, a true copy of the within ejectment Feb. 11th, 1895.

G. W. HATFIELD,
Dept. U. S. M.

STATE OF WEST VIRGINIA, }
County of Cabell. }

9 R. N. Owens, being duly sworn, doth say that he served the annexed notice and declaration upon defendant J. A. Peck in said county February 21st, 1895, by delivering to him in person a true copy of said notice and declaration.

R. M. OWENS,
Marshal, Town of G.

Subscribed and sworn to before me this 21st day of February, 1895.

SAM. D. HAYSLIP,
[NOTARIAL SEAL.] *Notary Public.*

STATE OF WEST VIRGINIA, } *To wit:*
Kanawha County, }

W. C. Fagg, a credible person, being duly sworn, on oath states that he executed the foregoing writ & notice thereto attached upon the Bowman Lumber Company, a foreign corporation, by delivering a copy of the same to E. B. Knight on the 20th day of February, 1895, and on G. S. Couch on the 22 day of February, 1895, composing the firm of Knight & Couch, in said county of Kanawha, being said company's authorized agent of record upon whom process is to be served, and executed upon J. E. Chilton, trustee, in said county of Kanawha, by delivering to him a copy of same on the 21st day of February, 1895.

W. C. FAGG.

Taken, subscribed, & sworn to before me, in said county, on this 22nd day of February, 1895.

J. N. CARR,
Notary Public in and for Kanawha County, West Virginia.

STATE OF WEST VIRGINIA, } *To wit:*
McDowell County, }

10 V. A. Wilder, a credible person, being duly sworn, on oath says that he executed the within declaration and notice attached upon P. B. Dobbins, trustee; J. F. Paull, Forest Coal Company, Spruce Coal & Lumber Company (the last two corporations formed under the laws of West Virginia), in the county of Ohio, State of West Virginia, on the 22nd day of February, 1895, by delivering to said P. B. Dobbins, trustee, and J. F. Paul a copy of same; on Spruce Coal & Lumber Company by delivering a copy thereof to P. B. Dobbins, its authorized agent of record upon whom process can be served, & upon Forest Coal Company by delivering to J. F. Paul, its authorized agent of record upon whom process can be served, and also served said declaration & notice upon J. C. Alderson by delivering a copy thereof to H. M. Taylor, his clerk,

at his place of business, in Ohio county, West Virginia, on the 22nd day of February, 1895, said Alderson being not found there.

V. A. WILDER.

Taken, subscribed, & sworn to before me this 23 day of February, 1895.

J. R. GREENAWALT,
Notary Public.

STATE OF WEST VIRGINIA, }
County of McDowell, } *ss:*

Anthony J. Manns, a credible person, of lawful age, being duly sworn, doth say that he served the foregoing notice and declaration in said State upon Lara Z. Toler, now Lara Z. Livingston; G. W. Cline, Nettie Toler, Mary B. Toler February 25, 1895; upon W. T. Kenneda, Martha Steel, W. G. Sansom February 26th, 1895, all being defendants named therein, by delivering to each of said defendants a copy of said notice & declaration, and upon Crockett Allison, J. C. B. Toler February 25, 1895; John Kenneda, Harrison Steele, Joseph Murphy, Elijah Vance February 26th, 1895,
11 all being defendants named therein, who were not found by affiant, by delivering to the wife of each of them, at their usual place of abode, a true copy of said notice and declaration, and giving to each of them information of the purpose of such copy.

ANTHONY J. MANNS.

Subscribed & sworn to before me this 27 day of February, 1895.
J. R. AUVILLE, *J. P.*

(Endorsed.)

We, the jury, by direction of the court, find the defendants M. B. Mullins, Alexander McClintock, and John McClintock not guilty.
A. J. SMITH, *Foreman.*

And on the same day, to wit, March 4th, 1895, the following docket entries were made, to wit:

Plea, N. G., by S. P. Kelly, in person; appearance & plea of N. G. by J. E. Chilton, for def'ts McDonald; appearance of sundry def'ts by Ferguson—plea, N. G.; non-residence suggested & rule for security for costs.

And at another day, to wit, on the 23d day of March, 1895, the following order was made and entered of record, to wit:

HENRY C. KING
vs.
SIMON S. ALTIZER *et als.* } In Ejectment.

This day came the plaintiff, by his attorneys, and on his motion it is ordered that W. C. Reddy and W. D. Sell, surveyors and civil engineers, who are hereby designated and appointed for the purpose,

do go upon the land in controversy in this suit and upon such adjacent and neighboring land as it may be necessary or proper to survey for the purpose of this suit and there do such surveying as they may be requested to do by any party to said suit and return into this court two reports, together with nine fair plats or prints of said surveying, showing how they shall have executed said order.

That before proceeding to make said survey they shall give to the parties or their attorneys ten days' notice of the time when and the place where they will begin to do such surveying.

And at another day, to wit, on the 8th day of July, 1895, the following order was made and entered of record, to wit:

HENRY C. KING, Plaintiff,
vs.
SIMON S. ALTIZER *et als.*, Def'ts. } In Ejectment.

In this cause came this day the plaintiff, by his counsel, and defendants Sarah D. Hatfield, Nancy C. Rutherford, and William Claypool, by their counsel, severing from their codefendants herein, and presented to the court a stipulation between plaintiffs and said defendants for the trial of the controversies between said parties, and asked leave to file the same, and that the same be set down for hearing and trial.

Whereupon the court doth order that said stipulation be filed in said cause, and doth set down the same to be heard upon the question of forfeiture of plaintiff's title to the land claimed by him as presented by said stipulation before this court, at Parkersburg, on the 28th day of June current.

And it is further ordered that said cause heretofore and now pending at Charleston be, and the same is hereby, removed and transferred to this court, at Parkersburg, there to be further proceeded in.

13 And at another day, to wit, on the 16th day of October, 1895, the following order was made and entered of record, to wit:

HENRY C. KING
vs.
S. S. ALTIZER *et al.* } In Ejectment.

This day came the plaintiff, by his attorneys, and the defendants M. B. Mullins, Alex. McClintock, and John McClintock, who elected to sever in their defense from the other defendants named in the declaration, by their attorneys, and thereupon the said defendants for plea say that they are not guilty of unlawfully withholding from the plaintiff the premises in the declaration mentioned, and of this they put themselves upon the country, and the plaintiff doth the like, and issue is thereon joined. Thereupon came a jury, to wit, James Tavenner, Henry Graff, Salathiel Stalnaker, Charles R. Lowe,

John A. Sanders, B. R. Blackford, Joseph Good, Anthony Toothman, G. W. Taggart, Alex. Laird, M. R. Lowther, and Charles Ebert, twelve good and lawful men selected, tried, and sworn, as the law directs, to well and truly try the issue joined in this cause and a true verdict render according to the law and the evidence, who, having heard a part of the evidence and there not being time to hear the whole thereof before the adjournment of the court, were adjourned until tomorrow morning at 10 o'clock.

And at another day, to wit, on the 14th day of November, 1895, the following order was made and entered of record, to wit:

HENRY C. KING
vs.
M. B. MULLINS and Others. } In Ejectment.

This day came again the parties, by their attorneys, and
14 the jury which was empannelled and sworn on a former day of this term to try the issue joined in this cause appeared pursuant to their adjournment, and again retired to their room to consider further of their verdict, and after a time returned into court, and, having declared that they were unable to agree upon what verdict they should render in this cause, they were, by consent of all parties, discharged from further consideration of this cause, and this cause is continued until the next term of this court.

And at another day, to wit, on the 14th day of January, 1896, the following order was made and entered of record, to wit:

HENRY C. KING
vs.
M. B. MULLINS and ALEX. McCLINTOCK. } In Ejectment.

This day came the parties, by their attorneys, and thereupon, on motion, —— Henry was appointed official stenographer to report the proceedings in this cause; thereupon the said Henry appeared and in open court took the oaths required by law; thereupon came a jury, to wit, W. L. Shepherd, John W. Morgan, L. C. Shingleton, J. W. Boehm, John M. Geary, A. L. Wells, D. B. Patten, E. J. Taylor, B. M. Smith, James A. Cookman, C. D. Dotson, and Ashby Smith, twelve good and lawful men selected, tried, and sworn, as the law directs, to well and truly try the issue joined in this cause and a true verdict render according to the law and the evidence, who, having heard a part of the evidence and there not being time to hear the whole thereof before the adjournment of the court, were adjourned until tomorrow morning at 9.30 o'clock.

And at another day, to wit, on the 15th day of January, 1896, the following order was made and entered of record, to wit:

15 HENRY C. KING
vs.
M. B. MULLINS & ALEX. MCCLINTOCK. } In Ejectment.

This day came again the parties, by their attorneys, and the jury which was empannelled and sworn on a former day of this term to try the issue joined in this cause appeared pursuant to their adjournment, and, having heard further of the evidence in this cause and there not being time to hear the whole thereof before the adjournment of the court, were adjourned until tomorrow morning at 9.30 o'clock.

And at another day, to wit, on the 16th day of January, 1896, the following order was made and entered of record, to wit:

HENRY C. KING
vs.
M. B. MULLINS & ALEX. MCCLINTOCK. } In Ejectment.

This day came again the parties, by their attorneys, and thereupon D. S. Phlegar was appointed additional stenographer in this cause, and was duly sworn as such. Thereupon the jury which was empannelled and sworn on a former day of this term to try the issue joined in this cause appeared pursuant to adjournment, and, having heard further of the evidence in this cause and there not being time to hear the whole thereof before the adjournment of the court, were adjourned until tomorrow morning at 9.30 o'clock.

And an order for the further hearing and continuance of the case was made from day to day until the 27th day of January, 1896, when the following order was made and entered of record, to wit:

HENRY C. KING
vs.
M. B. MULLINS & ALEX. MCCLINTOCK. } In Ejectment.

16 This day came again the parties, by their attorneys, and the jury which was empannelled and sworn on a former day of this term to try the issue joined in this cause appeared pursuant to their adjournment, and, having heard further of the evidence in this cause and there not being time to hear the whole thereof before the adjournment of the court, were adjourned until tomorrow morning at 9.30 o'clock; and it appearing to the court that Thomas L. Broun, a witness summoned to testify on behalf of the plaintiff upon the trial of this cause, is unable by reason of ill health to attend and testify upon the trial of said cause, upon motion of counsel for plaintiff in open court, it is ordered that the deposition of said Thomas L. Broun, *de bene esse*, to be read and used on behalf of plaintiff upon the trial of this cause now in progress, be taken at Charleston, West Virginia, at the office or residence of said Thomas L. Broun, on the 28th day of January, 1896, between the hours of 9 o'clock a. m. and 2 o'clock p. m., be-

fore some officer authorized to take depositions under the laws of the State of West Virginia.

And an order for the further hearing and continuance of the case was made from day to day until the 30th day of January, 1896, when the following order was made and entered of record, to wit:

HENRY C. KING
vs.
M. B. MULLINS, ALEX. MCCLINTOCK, *et al.* } In Ejectment.

This day came again the parties, by their counsel, and the jury which was empanneled and sworn on a former day of this term to try the issue joined in this cause, who, having heard the evidence, by direction of the court returned the following verdict, to wit:

17 We, the jury, by direction of the court, find the defendants M. B. Mullins, Alexander McClintock, and John McClintock not guilty.

A. J. SMITH, *Foreman.*

And at another day, to wit, on the 31st day of January, 1896, the following order was made and entered of record, to wit:

HENRY C. KING
vs.
M. B. MULLINS *et al.* } In Ejectment.

The time in which to prepare the bills of exceptions to the ruling of the court in instructing the jury to return a verdict for the defendants on the question of the forfeiture of the title of the land claimed by the plaintiff is hereby extended to the 26th day of February, 1896, at which time the same will be signed and sealed, and this cause stands continued until said day.

And at another day, to wit, on the 26th day of February, 1896, the following order was made and entered of record, to wit:

HENRY C. KING
vs.
SIMON ALTIZER, M. B. MULLINS, *et al.* } In Ejectment.

It is hereby ordered that the time for preparing bills of exceptions to the ruling of the court in instructing the jury to find their verdict for defendants in this cause, upon the ground of the forfeiture of the title to the land claimed by plaintiff, be, and the same is hereby, extended until tomorrow, February 27th, 1896, to which time this cause is hereby continued.

And at another day, to wit, on the 27th day of February, 1896, the following order was made and entered of record, to wit:

18 HENRY C. KING
vs.
M. B. MULLINS, ALEX. MCCLINTOCK, *et al.* } In Ejectment.

This day came again the parties, by their counsel, and thereupon the defendants, by their counsel, moved the court to render judgment upon the verdict of the jury rendered on the 30th day of January, 1896.

It is therefore considered by the court that the plaintiff take nothing by his bill, but for his false clamour be in mercy, &c., and that the defendants go thereof without day and recover of the said plaintiff their costs by them about their defence in this behalf expended.

And on the same day, to wit, on the 27th day of February, 1896, came the plaintiff, by counsel, and tendered and filed his bills of exceptions; which said bills are in the words and figures following, to wit:

Plaintiff's Bill of Exceptions No. 1.

HENRY C. KING
versus
SIMON S. ALTIZER *et als.* } Ejectment.

Be it remembered that upon the trial of this cause the plaintiff, to maintain the issue upon his part, introduced in evidence a certified copy of a grant issued by the Commonwealth of Virginia to Robert Morris June 23rd, 1795, for 500,000 acres of land then lying in the counties of Wythe and Russell, in Virginia, a large part whereof now lies in West Virginia, in the counties of Mingo, Logan, Wyoming, and McDowell, and in no other counties in West Virginia; which copy of said grant is in the following words and figures, to wit:

19 "Robert Brooke, Esquire, governor of the Commonwealth of Virginia, to all — whom these presents shall come, Greeting:

Know ye that by virtue of eleven land office treasury warrants, Nos. 652, 653, 654, 655, 658, 659, 643, 645, 647, 648, *and* issued the 28th August, 1794, and No. 619, issued 18th September, 1794:

There is granted by the said Commonwealth unto Robert Morris, assignee of Wilson Cary Nicholas, a certain tract or parcel of land containing 500,000 acres, by survey bearing date the 28th day of October, 1794, lying and being in the counties of Wythe and Russell, the greater part thereof in the former, on Sandy and Guyandotte rivers and the waters thereof, and is bounded as follows, to wit:

Beginning at two poplars and two chestnut trees on a branch of Guyandotte river and about six miles from the mouth of Little War creek, a branch of Sandy river, being a corner of a survey of said Nicholas of 480,000 acres and a survey of 320,000 acres made for said Nicholas and Jacob Kenney, and with a line of the latter

S. 33° W. 6,720 poles, crossing a dividing ridge, and down War creek to the mouth, crossing Sandy river at 6 miles, crossing Panther creek at nine miles, and crossing several ridges to four white oaks on the northwest bank of Knox creek, and thence, leaving said survey, W. 3,840 poles, crossing said creek and some of the branches thereof and along the spurs of the ridge dividing the waters of said creek and Peter's creek, a branch of Sandy river, to three poplars and a sugar tree by a small branch of Knox creek; thence N. 8,000 poles, crossing Knox creek at about four miles, Sandy river at twelve miles, the mouth of Turkey creek, and up said creek and the northwest forks of the same, crossing Buffalo creek, Pigeon creek, and the dividing ridge between Sandy and Guyandotte rivers and
20 Gilbert's creek twice, a branch of Guyandotte, to three sugar trees in a bottom of said river and about 20 poles below the mouth of Gilbert's creek; thence N. 10° E. 4,450 poles, crossing Guyandotte river, several small branches, and some ridges to pointers; thence E. 6,620 poles, crossing Guyandotte river and several branches thereof, to three sugar trees and a buckeye by a small branch of the same, being the northwest corner of a survey of said Nicholas of 480,000 acres; thence with the same S. 6,800 poles, crossing Huff's or Cain creek, to the beginning.

But it is always to be understood that the survey upon which this grant is founded includes 4,000 acres, which, having a preference by law to the warrants and rights upon which Robert Morris' survey is founded, liberty is reserved that the said 4,000 acres shall be firm and valid, and shall have the same effect and may be carried into grant or grants, and this grant shall be no bar in either law or equity to the confirmation of the title as before mentioned and reserved, with its appurtenances:

To have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Morris and his heirs forever.

In witness whereof the said Robert Brooke, Esquire, governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the 23rd day of June, in the year of our Lord one thousand seven hundred and ninety-five, and of the Commonwealth the 19th. Book 31, page 613.

[SEAL.] ROBERT BROOKE.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office.

Witness my hand and seal of office this 9th day of November, 1894.

W. R. GAINES,
[SEAL.] *Register of Land Office.*"

21 That plaintiff further offered evidence tending to prove that by sundry mesne conveyances and legislative and judicial proceedings the title of said Robert Morris to said tract of land in the year A. D. 1866 became vested in Robert E. Randall,

trustee, on June 29th, 1886, in John R. Reed, trustee, and through sundry mesne conveyances of the said Reed, trustee, David W. Armstrong, and Jno. V. Le Moyne passed to plaintiff, Henry C. King, December 27th, 1893, and that defendants were in possession of and claiming title to parts of said land within the bounds of said tract and outside the reservation in said grant when this action was brought and at the time of trial thereof.

That the defendants, to maintain the issue on their part, offered in evidence, to show an outstanding title in the State of West Virginia to said land, by forfeiture, a certificate of the auditor of said State of West Virginia in the following words and figures, to wit:

"STATE OF WEST VIRGINIA, }
"*Auditor's Office, Charleston.* }

"I, Isaac V. Johnson, auditor of the State of West Virginia, do hereby certify that neither Robert E. Randall, trustee, nor John R. Reed, trustee, nor John V. Le Moyne, Henry C. King, John Joseph Marie Schmidt Thornfeldt, August Marie Noverre d'Sericourt, Louis Antoine Des Virges de Maupertures, A. D. Maupertures, Emile Dumas, Charles Dumas, nor David W. Armstrong have entered on the land books of Wyoming, McDowell, Logan, Boone, or Mingo counties a tract of five hundred thousand acres of land for the years 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, and 1894, nor have either of them had said tract of five hundred thousand acres entered upon the land books of either or any of said counties for either or any of said years, nor have
22 they or either of them paid any taxes upon said land for any of said years within any of said counties, as appears from the records in my said office.

"I do further certify that said tract of five hundred thousand acres is not entered on the books of the assessor of any of said counties for any of said years.

"I do further certify that no land was entered on the books of the assessor of any of said counties for either or any of said years in the name of either or any of said parties.

"And I do further certify that none of the persons hereinbefore mentioned was charged on the land books of any of said counties with State tax on the land aforesaid or any part of it for the years aforesaid or any of them.

"In witness whereof I have hereunto set my hand and official seal this 29 day of October, 1895.

"I. V. JOHNSON,
[SEAL.] "*Auditor, State of West Virginia.*"

And plaintiff waived any objection to said certificate on account of the time of filing the same and offering the same in evidence and any want of notice of such filing and the intention to offer the same; but to the introduction of said certificate in evidence plaintiff, by counsel, objected upon the ground that the same is not the best evidence nor any evidence of an outstanding title in said State

to said land claimed by plaintiff, or of any forfeiture thereof or of any fact material to the issue in said cause; which objection of plaintiff was overruled by the court and said certificate was admitted and read in evidence; to which ruling of the court the plaintiff, by counsel, then and there excepted, and said exception was saved to him, and he prays that the same may be signed
23 and sealed and made part of the record, which is accordingly done, and is plaintiff's first bill of exception.

NATHAN GOFF. [SEAL.]

Plaintiff's Bill of Exceptions No. 2.

HENRY C. KING
v.
SIMON S. ALTIZER *et al.* } Ejectment.

Be it remembered that on the trial of this cause and after the matters stated in plaintiff's first bill of exceptions the defendants, to further maintain the issue on their part, offered in evidence, to be taken in connection with the certificate of the auditor mentioned in plaintiff's first bill of exceptions, a certified copy from the record of the circuit court of Wyoming county, West Virginia, and the report of E. M. Senter, commissioner of school lands of said Wyoming county; which said order and report are in words and figures following, to wit:

"WEST VIRGINIA:

At a circuit court continued and held for the county of Wyoming, at the court-house thereof, on Friday, the 18th day of April, 1890, for the transaction of chancery business.

Present: Hon. R. C. McClaugherty, judge.

This day W. B. McClure, commissioner of school lands for this county, appeared in open court and tendered his resignation as such commissioner, which was accepted by the court; thereupon the court appointed E. M. Senter, commissioner of school lands for this county, to fill the said vacancy; thereupon said Senter appeared in open court, together with L. B. Cook, J. J. Christian, and J. D. Shumate, his sureties, and entered into and acknowledged a
24 bond in the penalty of $5,000.00, conditioned according to law; which said bond was approved by the court as sufficient and ordered to be filed, which was accordingly done, and the clerk of this court is directed to record said bond in the bond book of this court; thereupon the said E. M. Senter appeared in open court and took the several oaths prescribed by law.

STATE OF WEST VIRGINIA, } *To wit:*
County of Wyoming, }

I, E. M. Senter, deputy for J. O. Sanders, deceased, clerk of the circuit court of said county, do certify that the foregoing is a true copy of the order appointing E. M. Senter, commissioner of school

lands for Wyoming county, West Virginia, as appears upon the records of my office.

Given under my hand and the seal of the said court this the 28th day of October, 1895.

E. M. SENTER,

[COURT SEAL.] *Deputy for J. O. Sanders, Clerk, Deceased.*"

" WEST VIRGINIA:

At a circuit court continued and held for the county of Wyoming, at the court-house thereof, on Saturday, the 31st day of March, 1894, for tge transaction of chancery business.

Present: The Honorable R. C. McClaugherty, judge.

This day E. M. Senter, commissioner of school lands for this county, filed his annual report of all tracts and parcels of lands which are liable to be sold for the benefit of the school fund, as required by section 5 of chapter 105 of the Code of West Virginia, as amended by the acts of the legislature of 1893, chapter 24; which report is in the following words and figures, to wit:

'To the Hon. R. C. McClaugherty, judge of the circuit court of Wyoming county, West Virginia:

25 *The Annual Report for the Year* 1894 *of E. M. Senter, Commissioner of School Lands of Wyoming County.*

Said commissioner of school lands of said county, in accordance with section 5 of chapter 105 of the Code of West Virginia, as *as* amended by the acts of the legislature of 1893, would beg leave to submit to the circuit court of said county the following report of a list of all tracts and parcels of land lying, in whole or in part, in said county of Wyoming, reported to him by the auditor of the State, as required by section 2 of chapter 105 of said Code, to wit, it being a list of lands within the county of Wyoming heretofore purchased for the State at sales thereof for delinquent taxes and not redeemed within one year or within the time required by law, made up from the records in the auditor's office and certified by the auditor to the clerk of the circuit court to be sold by the commissioner of school lands: 1. One tract of 366 acres on Clear fork, in Oceana district, charged to Sarah Ellis, and on the 14th day of December, 1891, sold for the taxes of 1889 and 1890. 2. One tract of 2,500 acres, in Oceana district, charged to Jesse R. Irwin, and on the 14th day of December, 1891, sold for the taxes of 1889. 3. One tract of 1,000 acres on Big fork, in Baileysville district, charged to Samuel Baugh, and on the 14th day of December, 1891, sold for the taxes of 1889. 4. One tract of 2,500 acres on Big fork, in Baileysville district, charged to Jesse R. Irwin, and on the 14th day of December, 1891, sold for taxes of 1889. 5. One tract of 2,500 acres on Guyandotte river, in Clear Fork dist., charged to Jesse R. Irwin *et al.*, and on the 14th day of December, 1891, sold for the taxes of 1889. 6. One tract of 2,500 acres on Huff's creek, in Huff's Creek district, charged to Jesse R. Irwin *et al.*, and on the 14th day of December, 1891, sold for the taxes of 1889. 7. One tract of

12 acres on Pinnacle creek, in Barker's Ridge district, charged
26 to Chas. L. Belcher, and on the 14th day of December, 1891, sold for the taxes of 1890. 8. One tract of 20 acres on Barker's ridge, in Barker's Ridge district, charged to Hugh J. Lilley's heirs, and on the 14th day of December, 1891, sold for the taxes of 1890. Said commissioner of school lands would further report that in the annual report of the commissioner of school lands for the year 1889 there was reported for sale for the benefit of the school fund 50,000 acres, forfeited in the name of the Pittsburgh National Bank of Commerce and sold on the — day of —— for the non-payment of the taxes due thereon for the years 1883 & 1884 and purchased by the State. There was also reported for like sale a tract of 5,000 acres, situated in Little Huff's Creek district, of said county, forfeited in the name of Smith & Fougeray and sold on the — day of —— for the non-payment of the taxes thereon for the years 1886 & 1887 and purchased by the State; also 4,000 acres, forfeited in the name of Smith & Fougeray, situated in Clear Fork district, of said county, and sold for the non-payment of taxes thereon for the years 1886 & 1887 and purchased by the State; also 3,000 acres in Baileysville district, of said county, and forfeited in the name of Smith & Fougeray and sold for the non-payment of taxes thereon for the years 1886 & 1887 and purchased by the State. The commissioner of the circuit court who was appointed to report upon proceedings heretofore instituted to sell the lands of said Pittsburgh National Bank of Commerce and Smith and Fougeray reported them a part of a 500,000-acre survey, Robert Morris patent, known as the "Robert E. Randall land," and that a suit was pending in the circuit or district court of the United States for the district of West Virginia, and that proceedings to sell the same under said formal proceedings had been enjoined. Said commissioner is advised that an error was made in said matter, and
that no suit was pending in said U. S. court with reference
27 to said 500,000-acre survey. The said commissioner of school lands would further report that it has come to his knowledge from Henry C. King, the present owner and claimant thereof, that a tract of 500,000 acres of land lying partly in this county and partly in the counties of Logan and McDowell, and the greater portion in the States of Virginia and Kentucky, was at the April term, 1883, of the circuit court of this county redeemed from a former forfeiture by Robert E. Randall, trustee, and all the taxes thereon paid prior to and including the year 1883; that since said redemption the said land has been omitted from the land books of this county for five consecutive years, to wit, for the years 1884, 1885, 1886, 1887, & 1888, and thereby the same has been forfeited to the State in the name of Robert E. Randall, trustee. The said commissioner of school lands further reports that each of said tracts hereinbefore mentioned are liable to be sold for the benefit of the school fund of this State on account of the forfeiture herein stated; all of which is respectfully submitted.

E. M. SENTER,
Com'r of School Lands.'

Which report is directed to be filed in the office of the clerk of this court, and the said commissioner of school lands is directed to institute in the name of the State of West Virginia suits in chancery for the sale of said lands, as required by section 6 of said chapter 105 of the Code of West Virginia, as amended by the acts of 1893, chapter 24.

STATE OF WEST VIRGINIA, } *To wit:*
County of Wyoming, }

I, E. M. Senter, deputy for J. O. Sanders, clerk of the circuit court of said county, deceased, do hereby certify that the foregoing is a true copy of the report of E. M. Senter, commissioner of
28 school lands for said county, filed at the March term of said court, 1894, together with a true copy of the order of the court filing the same.

Given under my hand and seal of the said court this the 28 day of October, 1895.

E. M. SENTER,

[COURT SEAL.] *Deputy for J. O. Sanders, Clerk, Deceased."*

To the introduction of which order and report and every part thereof in evidence plaintiff, by his counsel, objected upon the ground that the same are not the best evidence nor any evidence of forfeiture of the land claimed by plaintiff; that said report is not made in conformity with any law and is not authorized by law, but the court overruled said objection of plaintiff and permitted said order and report to be read in evidence to the jury; to which ruling of the court in admitting said order and report in evidence plaintiff, by counsel, then and there excepted and prayed that said exception be saved to him and signed, sealed, and made part of the record in this cause, which is accordingly done, and signed, sealed, and made part of said record, which is plaintiff's second exception.

NATHAN GOFF. [SEAL.]

Plaintiff's Bill of Exceptions No. 3.

HENRY C. KING }
vs. } Ejectment.
SIMON S. ALTIZER *et al.* }

Be it remembered that on the trial of this cause and after the matters stated in plaintiff's first and second bills of exceptions the defendants, to maintain the issue on their part, offered in evidence, to be taken in connection with the auditor's certificate men-
29 tioned in plaintiff's first bill of exceptions, a certified copy of an order of the circuit court of Logan county, West Virginia, and the report of U. B. Buskirk, commissioner of school lands of said county; which said order and report are in words and figures following, to wit:

"At a circuit court held for Logan county, at the court-house thereof, on April 1st, 1889, for the transaction of chancery business. Present: The Hon. Thomas H. Harvey, judge of said court.

The court this day appointed U. B. Buskirk as the commissioner of school lands for the county of Logan in the room and stead of L. D. Chambers, and the said U. B. Buskirk appeared in open court and accepted the trust, and together with R. W. Peck, J. B. Buskirk, J. R. Henderson, and Lewis Mullins, as his securities, entered into and acknowledged a bond in the penalty of $5,000.00, conditioned according to law, which is approved by the court and ordered recorded, and thereupon the said U. B. Buskirk took the several oaths required by law.

STATE OF WEST VIRGINIA, *Logan County,* } *To wit:*

I, T. C. Whited, clerk of the circuit court of said county, do hereby certify that the foregoing is a true copy of the order appointing U. B. Buskirk commissioner of school lands for Logan county, West Virginia, as appears from the records in my office.

Given under my hand and seal of said court this the 28th day of October, 1895.

[COURT SEAL.] T. C. WHITED, *Clerk.*"

The second of which is in the words and figures following, to wit:

The Annual Report of U. B. Buskirk, Commissioner of School Land of Logan County, West Virginia, Filed in the Circuit Court of said County.

30 To the Hon. Thomas H. Harvey, judge of said court:

In pursuance of section 5 of chapter 105 of the Code of West Virginia, the undersigned, U. B. Buskirk, commissioner as aforesaid, begs leave respectfully to report:

1. A list of all tracts and parcels of land lying wholly and in part in the county of Logan which have heretofore been reported for sale for the benefit of the school fund to the clerk of the circuit court of said county under sections 1 and 2 of said chapter 105.

2. A list of all tracts and parcels of land lying wholly and in part within the said county of Logan which in his opinion are liable to sale for the benefit of the school fund under the provisions of said chapter which have not been so reported for sale to the said clerk.

List of said Land Reported to said Clerk.

1. A tract of 1,000 acres in Hardee district, of said county, forfeited to the State of West Virginia in the name of John B. Goff.

2. A tract of 362 acres in said district forfeited to the State in the name of William Berry.

3. A tract of 80 acres in said district forfeited to the State in the name of Thomas L. Black.

4. A tract of 43 acres in said district forfeited to the State in the name of Thomas L. Black.

5. A tract of 49 acres in said district forfeited to the State in the name of Thomas L. Black.

6. A tract of 30 acres in said district forfeited to the State in the name of James Lowe's heirs.

7. A tract of 136 acres in said district forfeited to the State in the name of Pauley Little's heirs.

31 8. A tract of 500 acres in said district forfeited to the State in the name of John A. Lard.

9. A tract of 120 acres in said district forfeited to the State in the name of David Prince.

10. A tract of 1,000 acres in said district forfeited to the State in the name of Sarah V. Pugh.

11. A tract of 13 acres in said district forfeited to the State in the name of Nancye Pinson.

12. A tract of 345 acres in said district forfeited to the State in the name of John J. Robbins.

13. A tract of 20 acres of land in said district forfeited to the State in the name of William Ruyons.

14. A tract of 80 acres in said district forfeited to the State in the name of William Spaulding.

15th. A tract of 12 acres in said district forfeited to the State in the name of William Spaulding.

16th. A tract of 130 acres in said district forfeited to the State in the name of S. S. Vinson.

17th. A tract of 255 acres in said district forfeited to the State in the name of S. S. & F. M. Vinson.

18th. A tract of 619 acres in said district forfeited to the State in the name of S. S. & F. M. Vinson.

19th. A tract of 640 acres in said district forfeited to the State in the name of S. S. & F. M. Vinson.

20. A tract of 513 acres in said district forfeited to the State in the name of S. S. & F. M. Vinson.

21. A tract of 920 acres in said district forfeited to the State in the name of S. S. & F. M. Vinson.

22. A tract of 37 acres in said district forfeited to the State
32 in the name of Thomas Brewster.

23. A tract of 50 acres in said district forfeited to the State in the name of Johnson Brewer.

24. A tract of 6,000 acres in said district forfeited to the State in the name of Count De Fleury's estate.

25. A tract of 32 acres in said district forfeited to the State in the name of Rhoda Evans.

26. A tract of 30 acres in said district forfeited to the State in the name of James Evans.

27. A tract of 35 acres in said district forfeited to the State in the name of A. Maynard's heirs.

28. A tract of 100 acres in said district forfeited to the State in the name of A. Maynard's heirs.
29. A tract of 100 acres in said district forfeited to the State in the name of Cloe McCoy.
30. A tract of 52 acres in said district forfeited to the State in the name of Moses Marcum.
31. A tract of 200 acres in said district forfeited to the State in the name of James Muncy.
32. A tract of 25 acres in said district forfeited to the State in the name of James Muncy.
33. A tract of 82 acres in said district forfeited to the State in the name of Josiah Marcum's heirs.
34. A tract of 50 acres in said district forfeited to the State in the name of Jacob M. Marcum.
35. A tract of 25 acres in said district forfeited to the State in the name of Jacob Marcum.
36. A tract of 101,212½ acres in said district forfeited to the State in the name of Mag Miklin Wigslin.
33 37. A tract of 10 acres in said district forfeited to the State in the name of John Newsom.
38. A tract of 100 acres in said district forfeited to the State in the name of H. C. Ruyon.
39. A tract of 6,300 acres in said district forfeited to the State in the name of B. F. Ruff.
40. A tract of 60 acres in said district forfeited to the State in the name of L. V. Sarton.
41. A tract of 13 acres in said district forfeited to the State in the name of Rhoda Spaulding.
42. A tract of 309½ acres in said district forfeited to the State in the name of F. M. Vinson.
43. A tract of 450 acres in said district forfeited to the State in the name of F. M. Vinson.
44. A tract of 27 acres in said district forfeited to the State in the name of Ali Williamson.
45. A tract of 15 acres in said district forfeited to the State in the name of Ali Williamson.
46. A tract of 50 acres in said district forfeited to the State in the name of Ali Williamson.
47. A tract of 25 acres in said district forfeited to the State in the name of Ali Williamson.
48. A tract of 8 acres in said district forfeited to the State in the name of McCajah Dillon.
49. A tract of 25 acres in said district forfeited to the State in the name of McCajah Dillon.
50. A tract of 50 acres in said district forfeited to the State in the name of Nathaniel Deskins *et al.*
34 51. A tract of 232 acres in said district forfeited to the State in the name of Samuel Davis.
52. A tract of 30 acres forfeited to the State in said district in the name of Joseph Davis.

53. A tract of 25 acres in said district forfeited to the State in the name of Joseph Davis.
54. A tract of 50 acres in said district forfeited to the State in the name of Andrew Dempsey's heirs.
55. A tract of 25 acres in said district forfeited to the State in the name of Andrew Dempsey's heirs.
56. A tract of 107 acres in said district forfeited to the State in the name of E. S. Dempsey.
57. A tract of 100 acres in said district forfeited to the State in the name of Henry Dempsey.
58. A tract of 20 acres in said district forfeited to the State in the name of George W. Davis.
59. A tract of 22 acres in said district forfeited to the State in the name of Samuel Davis.
60. A tract of 32 acres in said district forfeited to the State in the name of Samuel Davis.
61. A tract of 37 acres in said district forfeited to the State in the name of Samuel Davis.
62. A tract of 66 acres in said district forfeited to the State in the name of Richard J. Evans.
63. A tract of 50 acres in said district forfeited to the State in the name of Surilda Lawson.
64. A tract of 75 acres in said district forfeited to the State in the name of Harrison Murphy.
65. A tract of 33 acres in said district forfeited to the State in the name of Samuel Ruyons.
35 66. A tract of 103 acres in said district forfeited to the State in the name of Samuel Ruyons.
67. A tract of 100 acres in said district forfeited to the State in the name of Jesse Parsley.
68. A tract of 265 acres in said district forfeited to the State in the name of James Starr, Sr.
69. A tract of 448 acres in said district forfeited to the State in the name of James Starr, Sr.
70. A tract of 250 acres in said district forfeited to the State in the name of James Starr, Sr.
71. A tract of 30 acres in said district forfeited to the State in the name of Rhoda Stafford.
72. A tract of 43 acres in said district forfeited to the State in the name of S. Stella Thompson.
73. A tract of 55 acres in said district forfeited to the State in the name of Nathan Deskins and others.
74. A tract of 22 acres in said district forfeited to the State in the name of George W. Davis.
75. A tract of 130 acres in said district forfeited to the State in the name of Lewis E. Dempsey.

Lands Forfeited to the State of West Virginia, Logan District.

1. 100 acres in the name of John Chambers' heirs.
2. 67 acres in the " " Greenbery Slack.

3. 500 acres in the name of E. Ward and J. Allen.
4. 31 acres " " " William Browning.
5. 100 acres " " " Gordon McNeely.
6. 25 acres " " " William Smith's heirs.
7. 100,000 acres " " Black and Suydam.
8. 375,000 acres " " J. L. Black.

36 9. 200 acres in the name of Milton Burgess.
10. 49 acres " " Hiram Burgess.
11. 128 acres " " Deal & Phillips.
12. 114 acres " " William Ellis.
13. 6,000 acres " " Harriet E. Griswall.
14. 800 acres " " John C. Hanover.
15. 250 acres " " James M. Laidley.
16. 90,000 acres " " Thomas William Mather.
17. 248 acres " " Hiram Mullins *et al.*
18. 40 acres " " James McNeeley & Geo. Smith's heirs.
19. 500 acres " " Enoch Totten.
20. 39½ acres " " Rhoda Bell.
21. 36 acres " " W. V. Vance.
22. 75 acres " " Rebecca Hinchman & T. M. S. heirs.
23. Lot No. 6 " " Jennie Justice.
24. Lot " 7 " " " "
25. 350 acres " " Hiram Mullins.
26. 15½ acres " " Anthonys Lawson's estate.
27. 19 acres " " " " "

Land Forfeited to the State of West Virginia in Chapmansville District.

No. 1. 200 acres in the name of John Chambers' heirs.
2. 35 acres in the name of Anthelia Elkins.
3. 18 acres " " Kelly Elkins.
4. 70 acres " " George W. Hager.
5. 125 acres " " S. A. Mullins.
6. 370 acres " " S. A. Mullins.
7. 47 acres " " Sarah McCloud.
8. 12 acres " " Arnold Perry.

37 9. 108 acres in the name of Jerimahia Perry.
10. 150 acres " " Harvey Dingess.
11. 30 acres " " " "
12. 40 acres " " " "
13. 25 acres " " Charles McCloud.
14. 362 acres " " William Perry.
15. 20 acres " " Patton Thompson.
16. 65 acres " " " "
17. 25 acres " " John Workman.
18. 500 acres " " James Conley.
19. 60 acres " " William F. Butcher.
20. 160 acres " " " " "
21. 62 acres " " Jane Dawlton.

22. 90 acres in the name of Wm. R. Ellis's heirs.
23. 50 acres " " Albert Gore.
24. 50 acres " " Polly Ann Gore.
25. 40 acres " " A. J. Mullins.
26. 35 acres " " Peter Mullins.
27. 350 acres " " R. W. Peck.
28. 94 acres " " Moses Tomlin.
29. 50 acres " " Asa Williamson.
30. 110 acres " " Peggy Mounts.

Land Forfeited to the State of West Virginia in Triadelphia Distr.

1. 8,320 acres in the name of Reynolds & Whitney.
2. 45 acres " " Malinda Hatfield.
3. 3,115 acres " " Hughes River Oil Company.
4. 2,680 acres " " Ezra Powell.
5. 1,280 acres in the name of Bailey or Brazilla Ransom.

38 6. 1,000 acres in the name of John W. Hall.

7. 4,000 acres " " "
8. 500 acres in the name of Mary A. Hinchman's heirs.
9. 1,715 acres " " N. Y. & Hughes River Oil Co.
10. 170 acres " " Richard Toler's heirs.
11. 5,000 acres " " Harris Hoyt.
12. 5,000 acres " " Jesse R. Irwin.
13. 5,000 acres " " Alvin Irwin.
14. 5,000 acres " " Charles F. Thomas.
15. 30,000 acres " " John Rodgers.
16. 140 acres " " Warren Alderson.
17. 20 acres " " "
18. 61 acres " " J. P. Christian.
19. 1,000 acres " " John W. Hall.
20. 4,000 acres " " John W. Hall.
21. 10 acres " " James A. Justice.
22. 50 acres " " John Perry's estate.
23. 30,000 acres " " John Rodgers.
24. 108 acres " " James A. Spratt.
25. 50 acres " " Maria Toler.
26. 20 acres " " Abner Vance, Sr.

Lands Forfeited to the State of West Virginia in Magnolia Distr.

1. 54 acres in the name of John A. Deskins.
2. 18 acres " " "
3. 509 acres " " John W. Deskins.
4. 10 acres " " "
5. 300 acres " " F. M. Hatfield.
6. 100 acres in the name of Wm. Mullins.

39 7. 1,000 acres in the name of Wm. Mullins' heirs.

8. 85 acres " " Christian Cline.
9. 106 acres in the name of Asbery Hurley.
10. 228 acres " " James M. Lawson.

11. 1 acres in the name of Alec Murphy's heirs.
12. 45 acres " " John Mullins.
13. 29 acres " " C. W. Mounts.
14. 70 acres " " Warren Alderson.
15. 267 acres " " Anderson Ferrell.
16. 36½ acres " " Michael Mounts.
17. 15 acres " " Moses Mounts.
18. 150 acres " " " "
19. 125 acres " " Asa McCoy.
20. 194 acres " " C. W. Mounts.
21. 17 acres " " Alexander Trent.
22. 70 acres " " Polly Tiller and E. Mounts.
23. 25 acres " " W. T. Wallis.
24. 78 acres " " Reuben White.

Lands Forfeited to the State of West Virginia in Lee District.

1. 40 acres in the name of Geo. F. McCoy.
2. 10 acres in the name of James Starr.
3. 200 acres " " James Taylor.
4. 45 acres " " James H. Evans.

List of said Lands Not Reported to said Clerk Forfeited for Non-entry for Five Successive Years from 1869.

1. A tract of 6,000 acres in the name of Count De Fleury *et als.*
2. A tract of 101,212½ acres granted by the Commonwealth of Virginia to William McCleary and forfeited in the name of
40 Mag Miklin Wigslin.
3. A tract of 6,300 acres forfeited in the name of B. F. Ruff.
4. A tract of 100,000 acres forfeited in the name of J. L. Black and Suydam.
5. A tract of 375,000 acres forfeited in the name of J. L. Black and Suydam.
6. A tract of 6,000 acres, part of a survey of 333,000 acres, granted to Levi Hollingsworth by the Commonwealth of Virginia and forfeited in the name of Harriet E. Griswell.
7. A tract of 90,000 acres, parts of two surveys, one of 500,000, granted by the Commonwealth of Virginia to Robert Morris, and the other the above 333,000 acres, and forfeited in the name of Thomas W. Mather.
8. A tract of 8,320 acres forfeited in the name of Reynolds and Whitney.
9. A tract of 2,115 acres forfeited in the name of the Hughes River Oil Company.
10. A tract of 2,680 acres forfeited in the name of Ezra Hall.
11. A tract of 1,280 acres forfeited in the name of Bailey or Barzilia Ransom.
12. A tract of 1,000 acres forfeited in the name of John W. Hall.
13. A tract of 4,000 acres forfeited in the name of John W. Hall.

14. A tract of 1,715 acres forfeited in the name of N. Y. & Hughes River Oil Company.

15. A tract — 38,277½ acres, situate mostly in the districts and Triadelphia, of Logan county, granted by the Commonwealth of Virginia to Richard Smith, assignee of Henry Banks, May 13th, 1796, and forfeited in the name of said Smith.

16. A tract of 100,000 acres, granted by the Commonwealth
41 of Virginia to Wm. McCleary Jan. 21, 1796, situate mostly in the districts of Logan and Hardee, of said county, claimed by John R. Read, trustee, of Philadelphia, Pa., and forfeited in the name of Robert E. Randall, trustee.

17. A tract of 50,000 acres, granted by the Commonwealth of Virginia to James Patton, situate mostly in the district of Hardee and forfeited in the name of James Patton; present claimants unknown.

18. A tract of 174,000 acres, granted by the Commonwealth of Virginia to Benjamin Grayson Orr December 24, 1795, situate mostly in Hardee district, forfeited in the name of Robert E. Randall, trustee, now claimed by John R. Read, trustee.

19. A tract of 101,212½ acres, granted by the Commonwealth of Virginia to William McCleery December 9th, 1795, situate mostly in Hardee district; forfeited in the name of Robert E. Randall, trustee, and now claimed by John R. Read, trustee.

20. A tract of 500,000 acres, granted by the Commonwealth of Virginia to Robert Morris, assignee of William Cary Nicholas, June 23, 1795, situate mostly in Triadelphia district; forfeited in the name of Robert E. Randall, trustee, and now claimed by John R. Read, trustee, and other unknown claimants.

21. A tract of 174,673 acres, granted by the Commonwealth of Virginia to Thomas Rutter and Reuben Etting January 9th, 1896, situate mostly in Triadelphia district; forfeited for non-entry; present claimants unknown.

22. A tract of 142,000 acres, granted by the Commonwealth of Virginia to De Witt Clinton February 19, 1796, situate mostly in Logan and Triadelphia districts; forfeited for non-entry. Last claimed by R. W. De Forest and L. W. Knox, executors of the last will and testament of Burr Wakeman, both of the city of
42 New York, and Helen M. Cunningham, and the unknown heirs of Samuel Benedict.

23. A tract of 50,096 acres, granted by the Commonwealth of Virginia to Edward Dillon April 16th, 1796, situate mostly in Tridelphia district; claimed by Charles Reader.

24. A tract of 187,000 acres, granted by the Commonwealth of Virginia to George K. Taylor November 2, 1896, situate mostly in Magnolia and Lee districts; claimed by unknown parties; forfeited for non-entry.

25. A tract of 213,000 acres, granted by the Commonwealth of Virginia to George K. Taylor November 2, 1796, situate mostly in Lee, Magnolia, and Logan districts; forfeited for non-entry; present claimants unknown.

26. A tract of 58,000 acres, granted by the Commonwealth of Vir-

ginia to James M. Benoist May 3, 1796, situate mostly in Chapmansville and Logan districts; forfeited in the name of John J. Benoist, his heirs or assigns; present claimants unknown.

27. A tract of 30,000 acres, granted by the Commonwealth of Virginia to John Green December 15, 1796, situate mostly in Magnolia and Lee districts; forfeited for non-entry; present claimants unknown.

28. A tract of 500 acres, situate on Copperas Mine fork of Island creek, granted by the Commonwealth of Virginia to Patrick King about 1860, and forfeited in his name; present claimants unknown.

29. A tract of 500 acres, situate on the Copperas Mine fork of Island creek, granted by the Commonwealth of Virginia to John H. Goddard about 1860; forfeited in his name; present claimants unknown.

30. A tract of 333,000 acres, situate mostly in Logan county, granted by the Commonwealth of Virginia to Levi Hollingsworth *et al.*, and forfeited in his name; present claimants unknown.

31. A tract of 84,000 acres, situate mostly in Magnolia
43 district, granted by the Commonwealth of Virginia to John Green, and forfeited to the State of West Virginia in his name.

32. A tract of 100,000 acres, location unknown, forfeited to the State of West Virginia in the name of and claimed by the Pittsburgh National Bank of Commerce.

Your commissioner recommends that a suit in chancery be brought and prosecuted in the name of the State of West Virginia in order that a sale may be made of all such parts of the said tracts and parcels of land as are liable to be sold for the benefit of the school fund.

This August 1st, 1891.

E. B. BUSKIRK,
Commissioner of School Lands.

STATE OF WEST VIRGINIA, } *To wit:*
Logan County, }

I, T. C. Whited, clerk of the circuit court of said county, do hereby certify that the foregoing is a true copy of the annual report of U. B. Buskirk, commissioner of school land for Logan county, West Virginia, as appears from the records of my office.

Given under my hand and seal of said court this 28th day of October, 1895.

T. C. WHITTED, *Clerk.*

A copy.
Teste: —— ——,
Clerk Circuit Court U. S., D. W. Va.

To the introduction of which order and report or either of them or any part thereof in evidence plaintiff, by his counsel, then and there objected upon the ground that the same are not the best evi-

dence or any evidence of the forfeiture of the land claimed
44 by plaintiff; that the said report is not in conformity with
any law; but the court overruled said objection of plaintiff and permitted the said order and report to be read in evidence to the jury; to which ruling of the court in admitting said order and report in evidence plaintiff, by his counsel, then and there excepted and prayed that said exception be saved to him and signed and sealed and made part of the record in this cause, which is accordingly done and signed and sealed and made part of said record, which is the plaintiff's third bill of exception.

NATHAN GOFF. [SEAL.]

Plaintiff's Bill of Exceptions No. 4.

HENRY C. KING
v.
SIMON S. ALTIZER *et al.* } Ejectment.

Be it remembered that on the trial of this cause and after the matters stated in plaintiff's first, second, and third bill of exceptions the defendants, to maintain the issue on their part, offered in evidence, to be taken in connection with the auditor's certificate mentioned in plaintiff's first bill of exceptions and in connection with the order and report mentioned in plaintiff's third bill of exceptions, a certified copy of an order of the circuit court of Logan county, West Virginia; which said order is in words and figures following, to wit:

At a circuit court continued and held for Logan county, at the court-house thereof, on Saturday, August 1st, 1891.

Present: The Hon. Thomas H. Harvey, judge of said court.

U. B. Buskirk, commissioner of school lands for the county of Logan, this day made his report to this court, containing a list of
45 all the tracts and parcels of land lying wholly and in part within this county which have heretofore been reported in the manner required by law to the clerk of this court by the auditor of this State as forfeited and liable to be sold for the benefit of the school fund of this State under the constitution and laws of this State, and also a list of forfeited lands lying wholly and in part within this county which, in his opinion, are liable to be sold for the benefit of the school fund of this State, which have not been so reported to said clerk by said auditor; all of which said lands the said commissioner of school lands suggests and recommends to the court should be sold under and by virtue of a suit in chancery to be brought and prosecuted in the name of the State of West Virginia under the provision of chapter 105 of the Code of West Virginia.

And the court being of the opinion that it is right and proper that such suit should be brought and prosecuted in the name of the State of West Virginia against the several persons interested in

said tracts and parts of tracts and each of them, either as former owners of claimants or occupants or otherwise—

And where any such persons are unknown against the unknown claimants thereof, as required and directed by said chapter of said code—

It is therefore adjudged, ordered, and decreed that suit in chancery be commenced and prosecuted in the name of this State for the sale of the said lands mentioned in said report against the said persons above indicated, which suit shall be conducted and prosecuted in accordance with the provisions of said chapter.

STATE OF WEST VIRGINIA, *Logan County,* } *To wit:*

I, T. C. Whited, clerk of the circuit court of said county, do
46 hereby certify that the foregoing is a true copy of the order filing the annual report of the com'r of school lands of Logan Co. for the year 1891 and directing suit, as appears from the records of my office.

Given under my hand and seal of said court this the 28th day of October, 1895.

[COURT SEAL.] T. C. WHITED, *Clerk.*

To the introduction of which decree in evidence plaintiff, by counsel, then and there objected upon the ground that said decree does not constitute or work a forfeiture of the land claimed by plaintiff and is not the best evidence or any evidence of such forfeiture; that said decree was not made in any suit or proceeding to which plaintiff or any person under whom he claims was a party; that said decree is not and was not authorized by law, and the said court had no jurisdiction or authority to pronounce or enter the same; which objection of plaintiff the court overruled and allowed said decree to be read in evidence to the jury; to which ruling of the court plaintiff, by counsel, then and there excepted and prayed that his said exception be saved to him and signed, sealed, and made part of the record of this cause, which is accordingly done and signed, sealed, and made part of the record, and is plaintiff's fourth exception.

NATHAN GOFF. [SEAL.]

Plaintiff's Bill of Exceptions No. 5.

HENRY C. KING *v.* SIMON S. ALTIZER *et al.* } Ejectment.

Be it remembered that on the trial of this cause and after the matters stated in plaintiff's first, second, third, and fourth bills of exceptions and after defendants had rested their case the
47 plaintiff, to prove that no forfeiture of the land or outstanding title thereto existed in or was claimed by the State of West

Virginia, and that there was no record of any forfeiture of said land where the same would be found if any such forfeiture did exist, introduced and read in evidence a certificate of the auditor of the State of West Virginia, dated Oct. 30th, 1895; which certificate is in words and figures following, to wit:

STATE OF WEST VIRGINIA:

AUDITOR'S OFFICE, CHARLESTON.

I, Isaac V. Johnson, auditor of the State of West Va., do certify that I have carefully examined the record books of forfeited lands returned and kept by me in said office, as required by law, for the counties of Logan, Mingo, Wyoming, and McDowell, in said State, from and including the year 1883 to this date, 1895, and there does not appear on said record books a tract of 500,000 acres of land or any part thereof or any other tract forfeited for any cause in the name of either Robert E. Randall, Robert E. Randall, trustee; A. D. Maupertures, Jno. R. Reed, John R. Reed, trustee; John V. Le Moyne, David W. Armstrong, or Henry C. King.

I further certify that there are no lands from any of said counties entered on the record of forfeited lands of this office for either or any of said years in the name of either or any of the said parties.

I do further certify that I have carefully examined the record books of delinquent lands returned and kept by me in said office, as required by law, for the counties of Logan, Mingo, Wyoming, and McDowell, in said State, from and including the year 1883 to this date, 1895, and there does not appear on said record book a tract of 500,000 acres of land or any part thereof or any other
48 tract delinquent for any cause in the name of either Robert E. Randall, Robert E. Randall, trustee; A. D. Maupertures, John R. Reed, John R. Reed, trustee; John V. Le Moyne, David W. Armstrong, or Henry C. King.

I further certify that there are no lands from any of said counties entered on the record of delinquent lands of this office for either or any of said years in the name of either or any of said parties.

Given under my hand and official seal this 30 day of Oct., 1895.

I. V. JOHNSON,

[SEAL.] *Auditor of West Virginia.*

That the plaintiff further offered evidence tending to prove that all taxes of the State of West Virginia charged or chargeable upon said tract of land up to and including the year 1883 had been fully paid and discharged by Robert E. Randall, trustee, under whom plaintiff claims title, and proved further that plaintiff was a purchaser of said tract of land for valuable consideration and without knowledge or notice of any alleged forfeiture thereof or outstanding title thereto in the State of West Virginia or of any of the facts set out in the auditor's certificate shown and referred to in plaintiff's first bill of exceptions, except such notice as the land books and records duly kept disclosed.

That thereupon plaintiff rested his case and the defendant did the

like; whereupon, at the instance of the defendants, the court instructed the jury as follows:

"The jury are instructed that the title to the land claimed by the plaintiff, granted to one Robert Morris by the Commonwealth of Va. by patent dated June 23rd, 1795, was (prior to the date of the deed made by John V. Le Moyne to Henry C. King, under
49 which the plaintiff now claims), under the provisions of the constitution of the State of West Va., forfeited to and vested in said State, and was so forfeited at the time this suit was instituted, and that therefore the plaintiff took and has no title to said land, and the jury are further instructed to render a verdict in favor of the defendants."

To which instruction plaintiff, by his counsel, objected upon the ground that said provisions of the constitution of the State of West Virginia for the forfeiture of lands are repugnant to and in conflict with the Constitution of the United States, to wit, article XIV, sec. 1, of the amendments thereto, and other paramount and control-ing provisions of said State constitution, to wit, art. III, sec. 4, 5, 9, 10, 20, art. V, sec. 1, of the said constitution of the State of West Virginia, and upon the further ground that if there were a forfeiture of the said land to said State and an outstanding title thereto in said State it could not be set up against plaintiff in this action, who is a purchaser for value without knowledge or notice of such forfeiture or of outstanding title; but the court overruled plaintiff's said objection and gave said instruction; to which ruling of the court in giving said instruction plaintiff, by his counsel, upon the grounds aforesaid, excepted, which is his second exception, and asked that said exception be saved to him and signed, sealed, and made a part of the record; and thereupon the jury, in accordance with said instruction of the court, proceeded to render a verdict, which is in the following words and figures, to wit:

"We, the jury, by direction of the court, find the defendants M. B. Mullins, Alexander McClintock, and John McClintock not guilty.

A. J. SMITH, *Foreman.*"

And the court thereupon proceeded to enter judgment upon the said verdict; which judgment is in the following words and
50 figures, to wit:

"This day came again the parties, by their counsel, and thereupon the defendants, by their counsel, moved the court to render judgment upon the verdict of the jury rendered on the 30th day of January, 1896.

"It is therefore considered by the court that the plaintiff take nothing by his bill, but, for his false clamour, be in mercy, &c., and that the defendants go thereof without day and recover of the said plaintiff their costs by them about their defense in this behalf expended."

To which rulings and action of the court the plaintiff, by his counsel, objected and excepted, and asked that said objections and

exceptions be saved to him and signed, sealed, and made a part of the record in said cause, all of which is accordingly done and signed, sealed, and made part of said record.

NATHAN GOFF. [SEAL.]

And at another day, to wit, on the 20th day of March, 1896, the following order was made and entered of record, to wit:

HENRY C. KING
vs.
M. B. MULLINS, ALEXANDER MCCLINTOCK, and JOHN MCCLINTOCK. } In Ejectment.

This day came the parties, by their counsel, and the plaintiff filed his petition in this court praying a writ of error to operate as a supersedeas from the judgment entered herein on the 27th day of February, 1896. It is ordered that said writ of error be accordingly allowed, to operate as such supersedeas, upon the plaintiff entering into a bond in the penalty of four thousand dollars, conditioned according to law, with security to be approved by the court.

51 *Petition for Writ of Error and Assignment of Errors.*

HENRY C. KING, Plaintiff in Error,
vs.
M. B. MULLINS, ALEXANDER MCCLINTOCK, and JOHN MCCLINTOCK, Defendants in Error. } In Ejectment.

Petition for writ of error and assignment of errors.

To the honorable the justices of the Supreme Court of the United States:

Your petitioner, Henry C. King, respectfully represents unto your honors—

That he is aggrieved by a final judgment of the circuit court of the United States for the district of West Virginia, fourth judicial circuit, rendered on the 27th day of February, 1896, against your petitioner and in favor of M. B. Mullins, Alexander McClintock, and John McClintock in an action then pending in said court entitled Henry C. King *vs.* Simon S. Altizer *et als.*, recently tried as to said defendants in error only, which judgment petitioner charges to be erroneous and against the just rights of petitioner.

And your petitioner makes the following assignment of errors committed by said circuit court to the prejudice of plaintiff, this petitioner, upon the trial of said cause, which will further and more fully appear from plaintiff's bills of exceptions made part of the record in said cause:

1st. The court erred in admitting in evidence to the jury on behalf of defendants and against plaintiff's objection, for the purpose of defeating the title shown by plaintiff to the land in controversy by showing that the title to said land had been forfeited to and was

vested in the State of West Virginia, the certificate of the
52 auditor of the State of West Virginia purporting or tending to show that said land had not been entered upon the land books of the counties where the same is situated in the name of plaintiff or of those under whom he claims since the year 1883, because such fact, if it be one, cannot operate to divest plaintiff or those under whom he claims of title to said land and because said certificate is no proof or evidence of such divestiture.

2d. The court erred in admitting in evidence to the jury on behalf of defendants and against plaintiff's objection, for the purpose of showing the forfeiture and divestiture of plaintiff's title, copies of an order of the circuit court of West Virginia for the county of Wyoming appointing E. M. Senter commissioner of school lands for said county and the report of said commissioner purporting to be a report of the forfeited lands of his county, said report being ineffectual to constitute and incompetent to prove and not proving and not being the best evidence or any evidence of forfeiture or divestiture of the title to said land.

3d. The court erred in like manner in admitting in evidence to the jury on behalf of defendants and against the objection of plaintiff copies of a like order of the circuit court of West Virginia for the county of Logan appointing U. B. Buskirk commissioner of school lands for said county and the like report of said commissioner purporting to be a report of the forfeited lands in his county.

4th. The court erred in admitting in evidence to the jury on behalf of defendants and against the objection of plaintiff a copy of an order of the said circuit court for Logan county directing suit to be brought and prosecuted in the name of the State of West Virginia to sell the lands mentioned in the said report of said commissioner of school lands for Logan county, it not appearing that said
53 lands were ever sold or were liable to be sold, or that any suit was ever brought for that purpose, and the said order being not the best nor any evidence that plaintiff's title to the land in controversy was forfeited or divested out of him or out of any person under whom he claims.

5th. The court erred in instructing the jury on behalf of defendants and against the objection of plaintiff "that the title to the land claimed by plaintiff, granted to one Robert Morris by the Commonwealth of Virginia by patent dated June 23d, 1795, was (prior to the date of the deed made by John V. Le Moyne to Henry C. King, under which plaintiff now claims), under the provisions of the constitution of the State of West Virginia, forfeited to and vested in said State and was so forfeited at the time this suit was instituted, and that therefore the plaintiff took and has no title to the said land," because the said provisions of said State constitution relating to forfeiture and attempting and purporting to forfeit and divest the title to land out of the owner and vest the same in the State or in some other person for the failure of the owner of such land to cause the same to be entered upon the land books are wanting in due process of law and are repugnant to and in conflict with article XIV, section 1, of the amendments to the Constitution of the United States

and are in conflict with and repugnant to paramount and controlling provisions of said State constitution, viz., Art. III, sections 4, 5, 9, 10, 20, and Art. V, section 1, and are therefore null and void.

6th. The court erred in instructing the jury against plaintiff's objection that by reason of the forfeiture thereof "plaintiff took and has no title to said land," there being no evidence of any such forfeiture, and it being proven by the certificate of the auditor of West Virginia that said land did not appear and was not to be found upon the record book of "lands forfeited for any cause" to
54 said State kept by him and required by law to be kept by him in his office, and it being further proven that plaintiff purchased said land for valuable consideration and without knowledge or notice of any alleged or pretended forfeiture thereof or of any facts upon which such forfeiture might be claimed or predicated.

7th. The court erred in instructing the jury, upon the evidence offered in this cause, that a forfeiture had occurred whereby the plaintiff or any one under whom he claims was divested of his title to said land, and in directing the jury to find a verdict for the defendants, because upon the evidence under the Constitution there is nothing to warrant the jury in finding such verdict or the court in giving such direction.

8th. The court erred in instructing the jury to find their verdict for the defendants, the plaintiff having shown a right to recover and the defendants having failed to make out any defense.

9th. The court erred in causing judgment to be entered for defendants upon said verdict.

And petitioner says that the value of the matter in controversy in this cause exceeds five thousand dollars, exclusive of interest and costs, and that said cause is one that involves the construction and application of the Constitution of the United States and in which the constitution of a State is claimed to be in contravention of the Constitution of the United States.

Wherefore your petitioner prays that a writ of error issue out of your honors' court to the said circuit court of the United States for the district of West Virginia to bring before your honors the record of said cause of Henry C. King *vs.* Simon S. Altizer *et als.*, so far as the same relates to said defendants in error, and that the judgment of said circuit court entered in said cause as aforesaid on the
55 27th day of February, 1896, be by your honors reviewed and reversed.

And petitioner will ever pray, etc.

HENRY C. KING,
By Counsel.

MAYNARD F. STILES,
F. L. BUTTRICK,
H. K. SHUMATE,
DANIEL TRIGG, *Sol's.*

Bond.

And on the same day, to wit, on the 20th day of March, 1896, the plaintiff in error filed his bond; which said bond is in the words and figures following, to wit:

Know all men by these presents that we, Henry C. King, as principal, and Sidney D. Freshman, as surety, both of the city and county of New York, are held and firmly bound unto M. B. Mullins, Alexander McClintock, and John McClintock in the full and just sum of four thousand dollars, to be paid to the said M. B. Mullins, Alexander McClintock, and John McClintock, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twentieth day of March, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a circuit court of the United States for the district of West Virginia, in a suit depending in said court between Henry C. King, plaintiff, and Simon S. Altizer and others, defendants, tried as to M. B. Mullins, Alexander McClintock, and John McClintock, a judgment was rendered against the said Henry
56 C. King, plaintiff as aforesaid, and the said Henry C. King, plaintiff as aforesaid, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said M. B. Mullins, Alexander McClintock, and John McClintock to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Henry C. King shall prosecute his writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

H. C. KING. [SEAL.]
S. D. FRESHMAN. [SEAL.]

Sealed and delivered in presence of—

——— ———.

Approved by—

J. J. JACKSON,
U. S. Dist. Judge.

March 20, '96.

And on the same day, to wit, on the 20th day of March, 1896, was allowed and filed the following:

Writ of Error.

The Supreme Court of the United States.

The President of the United States of America to the judges of the circuit court of the United States for the district of West Virginia:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, be-
57 fore you or some of you, between Henry C. King, plaintiff, and M. B. Mullins, Alexander McClintock, and John McClintock, defendants, a manifest error hath happened, to the great damage of the said Henry C. King, plaintiffs as by his complaint appears, we, being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday in October next, in the said Supreme Court of the United States to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

J. J. JACKSON,
U. S. District Judge.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 20th day of March, 1896, and in the
[SEAL.] 120th year of the Independence of the United States of America.

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

58 THE UNITED STATES OF AMERICA:

To M. B. Mullins, Alexander McClintock, and John McClintock, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of West Virginia, in a certain suit in ejectment wherein Henry C. King is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John J. Jackson, judge of the district court of the United States, dist. West Va., this twentieth day of March, in the year of our Lord one thousand eight hundred and ninety-six.

{ Seal Circuit Court United States, District West Virginia, at Parkersburg, West Va. }

J. J. JACKSON,
U. S. Dist. Judge.

58½ [Endorsed:] Served within citation March 28, 1896, by delivering a duly attested copy thereof to M. B. Mullins, in Logan county, W. Va. Served on Alexander McClintock and John McClintock by delivering copy to Z. T. Vinson, their attorney, at Huntington, they being not found within my district. Chas. E. Wells, U. S. M., by G. W. Hatfield, dep. U. S. M.

59 THE UNITED STATES OF AMERICA:

To M. B. Mullins, Alexander McClintock, and John McClintock, Greeting:

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Witness the Honorable John J. Jackson, judge of the district court of the United States, dist. West Va., this twentieth day of March, in the year of our Lord one thousand eight hundred and ninety-six.

{ Seal Circuit Court United States. District West Virginia, at Parkersburg, West Va. }

J. J. JACKSON,
U. S. Dist. Judge.

A copy.
Attest: L. B. DELLICKER, *Clerk.*

Service of within accepted this 7th day of April, 1896.
VINSON & THOMPSON,
Att'ys for Alex. McClintock and Jno. McClintock.

60 UNITED STATES OF AMERICA, *District of West Virginia,* } *To wit:*

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true transcript of so much of the record in the cause in eject-

ment of Henry C. King *v.* Simon S. Altizer *et al.*, pending in said court and tried as to the defendants M. B. Mullins, Alexander McClintock, and John McClintock, as was asked for by the plaintiff, together with the original citation, with its returns, made part hereof.

Given under my hand and the seal of said court, at Parkersburg, in said district, this 15th day of April, 1896, and in the 120th year of the Independence of the United States of America.

Seal Circuit Court United States, District West Virginia, at Parkersburg, West Va.

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

Endorsed on cover: Case No. 16,257. West Virginia C. C. U. S. Term No., 491. Henry C. King, plaintiff in error, *vs.* M. B. Mullins, Alexander McClintock, and John McClintock. Filed April 16, 1896.